MYSORE ACT No. XI OF 1946

THE MYSORE EXCESS PROFITS TAX ACT, 1946.

(AS AMENDED BY ACTS XXIV OF 1946 AND II OF 1949.)

(Received the assent of His Highness the Maharaja on the 10th day of January 1946)

An Act to impose a tax on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses under the present conditions:— Preamble.

It is hereby enacted as follows:—

1. (1) This Act may be called the Mysore Excess Profits Tax Act, 1946. Short Title and Extent.

(2) It extends to the whole of Mysore.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "accounting period" in relation to any business means— Definitions.

(*a*) where the accounts of the business are made up for successive periods of twelve months, each of such periods;

(*b*) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub-clause (*b*) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Mysore Income-tax Act, 1923.

(2) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule;

(3) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act:

(4) "chargeable accounting period" means —

(*a*) any accounting period, beginning on or after the 1st day of July 1944, and [1][ending on the 30th day of June 1946, and]

[2][(*b*) where an accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term.]

(5) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3;

(6) "company" means a company as defined in the Mysore Companies Act, 1938, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British Possession or of a law of an Indian State, and includes any foreign association carrying on business in Mysore whether incorporated or not, and whether its principal place of business is situate in Mysore or not, which the Government may, by general or special order, declare to be a company for the purposes of this Act;

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1. Added by Act XXIV of 1946.
2. Substituted by Act XXIV of 1946.

(7) "deficiency of profits" means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits;

(8) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

(i) is a manager of the company or concerned in the management of the business; and

(ii) is remunerated out of the funds of the business; and

(iii) is the beneficial owner of not less than twenty per cent of the ordinary share capital of the company;

(9) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3;

(10) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

(11) "person" includes a Hindu undivided family;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "profits" means profits as determined in accordance with the First Schedule;

(14) "standard profits" means standard profits as computed in accordance with the provisions of section 6;

(15) "statutory percentage" means—

(*a*) in relation to a business carried on by a body corporate eight per cent per annum;

(*b*) in relation to a business carried on by a person other than a body corporate, ten per cent per annum:

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent:

Provided further that where the business was commenced on or after the 1st day of July 1939, the foregoing percentages shall be increased from eight, ten and six per cent, to ten, twelve and eight per cent, respectively.

Excess Profits Tax Authorities.

3. (1) There shall be the following classes of Excess Profits Tax Authorities for the purposes of this Act, namely—

(*a*) Commissioner of Excess Profits Tax.

(*b*) Excess Profits Tax Officers.

(2) The Commissioner of Excess Profits Tax and Excess Profits Tax Officers shall be persons appointed by the Government by notification in the official Gazette. The Excess Profits Tax Officers shall perform their functions in respect of such persons or classes of persons or of such businesses and in respect of such areas as the Government may direct.

Charge of tax.

4. (1) Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "Excess Profits Tax") which shall be equal to sixty per cent of that excess:

Provided that any profits which are, under the provisions of sub-section (3) except item (ix) thereof of section 4 of the Mysore Income-tax Act, 1923, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

(2) One-third of the excess profits tax so charged, levied and paid for the period the Act is in force subject to modifications or adjustments, if any, necessitated by any proceedings taken or relief given under the provisions of this Act, shall be repaid to the party concerned, or in the case of his death to his legal representative [1][at a date not later than two years after the date of termination of the present hostilities or one year after the date on which excess profits tax was paid, whichever is later,] together with simple interest not exceeding 2 per cent per annum, subject to such conditions as the Government may prescribe.

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1. Substituted by Act II of 1949.

Application of the Act.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-section (1) or sub-section (2) without the proviso at the end of that sub-section, of section 4 of the Mysore Income-tax Act, 1923.

Standard profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-section (3) be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available the same proportion as the chargeable accounting period bears to the standard period:

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease:

Provided further that in the case of a business which was commenced on or after the 1st day of July 1936, the standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be

(*a*) the "previous year" as determined under section 2 of the Mysore Income-tax Act, 1923, for the purpose of the income-tax assessment for the year ending on the 30th day of June, 1937, or the previous year as so determined for the year ending on the 30th day of June 1938; or

(*b*) the "previous year" as so determined for the year ending on the 30th day of June 1937, and that for the year ending on the 30th day of June 1939; or

(*c*) the "previous year" as so determined for the year ending on the 30th day of June 1938, and that for the year ending on the 30th day of June 1939; or

(*d*) the "previous year" as so determined for the year ending on the 30th day of June 1939 and that for the year ending on the 30th day of June 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum:

Provided that if the chargeable accounting period is greater or less than one year, the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

Relief on occurrence of deficiency of profits.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:—

(*a*) the amount or the aggregate amount of the profits so chargeable for the previous chargeable accounting period or periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

(*b*) where the amount of the deficiency of profits exceeds the amount or the aggregate amount of the profits so chargeable for the previous chargeable accounting period or periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

Successions and amalgamations.

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

(2) Where the change took place before the 1st day of July 1944, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of July, 1944, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and in particular, in computing the capital employed in the business after the change, and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of July, 1944, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

(*a*) it had been in existence throughout the period during which there were in existence any of the former businesses;

(*b*) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and

(*c*) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business;

and, in particular, in computing the capital employed in the resulting business, and in considering, for the purposes of computing the profits of, and the capital employed

during any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of July, 1944, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamation, shall apply accordingly:

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or to the Government on appeal in the prescribed time and manner, to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of July 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of July 1944, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business.

(7) Where on or after the 1st day of July 1944, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before that date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period

under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

(8) Where—

(*a*) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued; or

(*b*) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business; or

(*c*) a business is, by virtue of sub-section (5), to be treated as a continuation of another business; or

(*d*) any person, who is carrying on a business after a transfer is treated by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper:

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of 45 days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Government through the Excess Profits Tax Officer.

Artificial transactions.

9. (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.

Transactions designed to avoid or reduce liability to excess profits tax.

10. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected whether before or after the passing of this Act was the avoidance or reduction of liability to excess profits tax, he may make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

(*a*) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent ;

(*b*) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

Relief in respect of double excess profits taxation.

11. (1) The Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in a country outside Mysore, have been paid upon the profits of any business if it appears to the Government that the laws of those countries provide for corresponding relief.

(2) If any person, who has paid excess profit tax under this Act, for any chargeable accounting period in respect of profits arising outside Mysore in a country the laws of which do not provide for any relief in respect of excess profits tax charged in Mysore, proves that he has paid excess profits tax under the laws of the said country

in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in Mysore of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country whichever is the less.

Explanation.—For the purposes of computing the amount of relief allowable under this section such part of the excess profits tax repayable under sub-section (2) of section 4, shall not be treated as excess profits tax and shall be ignored.

Allowance of excess profits tax in computing income for income-tax purposes.

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by,

(i) any amount repayable under sub-section (2) of section 4 ; and

(ii) any amount allowable by way of relief under the provisions of section 11,

shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside Mysore on the profits of the business in respect of any chargeable accounting period to the extent to which such profits are liable to excess profits tax under this Act, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in Mysore :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without Mysore, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be

taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Mysore Income-tax Act, 1923) in which the deficiency of profits occurs.

Issue of notices for assessment.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice, the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7 :

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require:

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Mysore Income-tax Act, 1923, for the purpose of the income-tax assessment for the year ending on the 30th day of June 1937.

Assessments.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such

assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by the virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

Power to make provisional assessments.

15. (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 14 may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a

provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 7 to be set off against the excess profits of the chargeable account period in respect of which the assessment is being made:

Provided that where such deficiencies of profits have not been determined under sub-section (1) of section 14, the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 14, determine the amount of excess profits tax from the assessee

(6) If, when a regular assessment is made in due course under section 14 the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at five per cent per annum calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

Profits escaping assessment.

16. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within three years of the end of the chargeable accounting period in question

serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Penalties.

17. If the Excess Profits Tax Officer or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

(*a*) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable; and

(*b*) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct.

Appeals.

18. (1) Any person aggrieved by a decision made in pursuance of section 8 or section 10, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Commissioner:

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the second proviso to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that schedule:

Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any refusal to make modifications or against any modifications made by the Excess Profits Tax Officer under sub-section (8) of section 8, or against any decision of the Excess Profits Tax Officer under rule 10 of the First Schedule.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of receipt of intimation of the order granting or refusing to grant the relief, but the Commissioner may admit an appeal after the expiration of that period if he is satisfied that the applicant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty:

Provided that an order enhancing an assessment or penalty shall not be made, unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

Power to call for and examine the records of proceedings of Excess Profits Tax Authorities.

19. The Government may call for and examine the records of the proceedings of any Excess Profits Tax Authority for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceeding of such authority. If in any case it shall appear to the Government that any decision or order or proceedings of such authority should be modified, annulled or reversed, the Government may pass such orders, not inconsistent with this Act, as they deem fit:

Provided that no order prejudicial to any person to whose business this Act applies shall be passed without hearing him, or giving a reasonable opportunity of being heard.

Rectification of mistakes.

20. The Commissioner may, at any time within three years from the date of any order passed whether by himself or by any Excess Profits Tax Officer under this Act, rectify any mistakes in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of of being heard.

Application of provisions of Act V of 1923

21. The provisions of sections 10, 13, 29, 36 to 44 (inclusive), 45 to 48 (inclusive), 50, 54, 61 to 63 (inclusive) and 65 to 67 (inclusive) of the Mysore Income-tax Act, 1923, shall apply with such modification, if any, as may be prescribed, as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax:

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

Income tax papers to be available for the purposes of this Act.

22. (1) Notwithstanding anything contained in the Mysore Income-tax Act, 1923, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Mysore Income-tax Act, 1923.

Failure to deliver returns or statements.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 13 he shall, on conviction by a Magistrate, be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

False statement and declaration.

24. If a person makes in any return required under section 13 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Institution of proceedings and composition of offences.

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Commissioner.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the Indian Penal Code as in force in Mysore shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Commissioner may either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

Power of Government to grant relief in special cases.

26. (1) If on an application made to them through the Excess Profits Tax Officer the Government are satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, the Government may direct that the standard profits of the business shall be computed to be such greater amount as the Government think just :

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business, unless the Government are satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed :

Provided further that a determination on an application under this sub-section—

(*a*) shall have effect with respect to all subsequent chargeable accounting periods ;

(*b*) shall exclude any further application under this sub-section.

(2) Without prejudice to the generality of the provisions of sub-section (1) the Government shall, in considering

the making of a direction under that sub-section, have regard to the following circumstances, namely—

(*a*) that the capital employed in a business commenced on or after the 1st day of July 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses;

(*b*) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax;

(*c*) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in Mysore before the 1st day of July, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of July, 1937.

(3) If on an application made to them through the Excess Profits Tax Officer the Government are satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely—

(*a*) any postponement or suspension, as consequence of the present hostilities, of renewals or repairs, or

(*b*) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities,

the Government may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as they think just:

Provided that in making such direction the Government may impose such conditions as they deem appropriate.

(4) An application to the Government under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

Power to make rules.

27. (1) The Government may make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

(*b*) provide for the adaptation to excess profits tax of any of the provisions of the Mysore Income-tax Act, 1923, which are made applicable to excess profits tax by section 21, or of any rules made under any such provision;

(*c*) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in Mysore;

(*d*) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Mysore Income-Tax Act, 1923.

Repeal and Savings.

28. The Mysore Excess Profits Tax (Emergency) Act, 1945 (XV of 1945) continued by the Mysore Excess Profits Tax (Emergency continuance) Act, 1945 (XXXII of 1945) is hereby repealed. But any rules made, anything done and any action taken in exercise of any power conferred by or under the said Emergency Act shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 5th day of May, 1945.

SCHEDULE I.

See *Section 2 (13)*.

RULES FOR THE COMPUTATION OF PROFITS FOR PURPOSES OF EXCESS PROFITS TAX.

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Mysore Income-Tax Act, 1923:

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Mysore Income-Tax Act, 1923, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax:

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period; and any such apportionment shall be made in proportion to the number of months or fraction of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. (1) The principle of adding the allowance for depreciation for any period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

3. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2) and (5) of this rule and not otherwise.

(2) In the case of the business of a building society, or of a money lending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Mysore Income-Tax Act, 1923, or is charged under any other section of that Act, or has been subjected to reduction of tax at source or is free of or exempt from income-Tax.

(3) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.

(Schedule I)

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Mysore Income-Tax Act, 1923 or u der any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respe t of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

4. If at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

5. (1) In computing for any chargeable accounting period and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 3 of this Schedule applies, or the profits of a part of a business other than a part of the business to which sub-rule (3) of the said rule applies, no deduction shall be made in respect of interest or borrowed money or in respect of any other consideration given for the use of borrowed money :

Provided that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act :

Provided further that where a direction has been given by the Government under sub-section (1) of section 26 of this Act that the standard profits shall be computed as if the profits during standard period were such greater amount as they think just such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 3 of the second Schedule " borrowed money " means borrowed money which, apart from the provision of the said rule 3, would have been deductable in computing capital.

(Schedule I)

6. No deduction shall be made on account of liability to pay, or payment of income-tax, super-tax or excess profits tax.

7. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

8. Where the performance of a contract extends beyond the accounting period there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein:

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amount so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

9. In respect of any building erected on or after the commencement of the first chargeable accounting period, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the original cost of the building as reduced by the depreciation allowance so far given shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

10. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of thirty days from the date on which such determination is communicated to him, appeal to the Commissioner.

11. In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned.

SCHEDULE II.

[See *section 2 (2)*].

RULES FOR COMPUTING THE AVERAGE AMOUNT OF CAPITAL

1. (1) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

(*a*) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified ;

(*b*) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions ;

(*c*) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation and to such other deductions as are allowable in computing profits for the purposes of income-tax and in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted :

(*Schedule II*)

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(*a*) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 the Mysore Income-tax Act, 1923 ;

(*b*) in the case of excess profits tax, on the 1st day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period ; and the said sums shall be deducted notwithstanding that they have not become payable.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the 1st day after the end of the chargeable accounting period in which the deficiency occurred.

3. In computing for any chargeable accounting period and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 3 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (3) of the said rule applies, no deduction shall be made in respect of borrowed money :

Provided that, the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.

4. (1) Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys or any trading stock or stock of raw materials not required for the purposes of the business, shall be left out of account but where any investments in the beneficial ownership of the person carrying on the business are so left of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

(*Schedule II*)

(2) The Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stock of raw materials.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

(*a*) to have accrued at an even rate throughout the period; and

(*b*) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

7. (1) If—

(*a*) the Government are satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

(*b*) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Government by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Government, they were inherently unproductive:

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Government under sub-section (1) of section 26 of this Act, the provisions of this rule shall have effect to such extent only as the Government think proper:

Provided further that an application to the Government under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.